

ORDINANCE NO. 12-15

AN ORDINANCE OF THE CITY OF KEY WEST AMENDING CHAPTER 108 OF THE CODE OF ORDINANCES ENTITLED "PLANNING AND DEVELOPMENT" TO INCLUDE SECTION 108-999 TO PROVIDE FOR THE RETROACTIVE INVOKING OF THE ZONING IN PROGRESS DOCTRINE; DECLARING THAT THE CITY IS CONSIDERING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS AND BUILDING PERMIT ALLOCATION SYSTEM; DIRECTING BUILDING AND PLANNING DEPARTMENT STAFF TO CONTINUE THE POLICY OF DEFERRING THE ACCEPTANCE AND PROCESSING OF DEVELOPMENT APPLICATIONS REQUIRING THE ISSUANCE OF BUILDING PERMIT ALLOCATIONS; CONTINUING THIS POLICY UNTIL NEW BUILDING PERMIT ALLOCATION REGULATIONS OR AMENDED LAND DEVELOPMENT REGULATIONS ARE ADOPTED BY THE CITY COMMISSION; PROVIDING FOR RETROACTIVE EFFECT, DIRECTING STAFF TO CONTINUE PREPARATIONS OF NEW BUILDING PERMIT ALLOCATION REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 90-517 of the Code of Ordinances allows the City Commission to amend the text of the Land Development Regulations in accordance with certain procedures and criteria;

WHEREAS, pursuant to Section 90-522, the Planning Board held a noticed public hearing on 4-19-12; where based on the consideration of recommendations of the City Planner, City Attorney, Building Official and other information recommended approval of the proposed

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

amendments with modifications; and

WHEREAS, the City Commission held a noticed public hearing on 5-15-12 and a second public hearing on 6-5-12 and in its deliberations considered the criteria identified in Section 90-521 of the Code of Ordinances; and

WHEREAS, the City determined that the proposed amendments are: consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 108, Article X, of the Code of Ordinances is hereby amended as follows*:

Sec. 108-999 Zoning in Progress.

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*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

City staff shall defer the acceptance and processing of applications dated after November 16, 2011 for building permit allocations with exception of requests for beneficial use allocations until new land development regulations are adopted, or until the passage of 365 days, whichever occurs first.

108-9991000-108-1125- Reserved

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

Read and passed on first reading at a regular meeting held
this 15th day of May, 2012.

Read and passed on final reading at a regular meeting held
this 5th day of June, 2012.

Authenticated by the presiding officer and Clerk of the
Commission on 5th day of June, 2012.

Filed with the Clerk June 6, 2012.


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY THE CITY OF KEY WEST,
FLORIDA, ORDINANCE NO. 12-15

2012 AUG -6 PM 3:37
KEY WEST, FLORIDA

FINAL ORDER

The Department of Economic Opportunity ("Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), Fla. Stat. (2012), approving land development regulations adopted by the City of Key West, Florida, Ordinance No. 12-15 (the "Ordinance").

FINDINGS OF FACT

1. The City of Key West is designated pursuant to § 380.05(1), Fla. Stat. (2012), and Chapter 28-36, Florida Administrative Code, as an area of critical state concern. Land development regulations adopted by the City of Key West do not become effective until approved by the Department by final order. §§ 380.05(6) and (11), Fla. Stat. (2012).

2. The Ordinance was adopted by the City of Key West on June 5, 2012, and rendered to the Department on July 5, 2012.

3. The Ordinance amends Chapter 108 of the City Code, entitled "Planning and Development" by adding Section 108-999 "Zoning in Progress" to defer processing of building permits dated after November 16, 2011, while the City formulates and adopts amendments to its building permit allocation system or until the passage of 365 days, whichever occurs first.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. §§ 380.05(6) and (11), Fla. Stat. (2012).

5. "Land development regulations" include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Fla. Stat. (2012). The regulations adopted by the Ordinance are land development regulations.

6. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. §§ 380.05(6) and (11), Fla. Stat. (2012). The Principles for Guiding Development for the City of Key West Area of Critical State Concern are set forth in Rule 28-36.003(1), Florida Administrative Code.

7. The Ordinance is consistent with the Principles for Guiding Development as a whole, and specifically furthers the following Principles:

(a) To strengthen local government capabilities for managing land use and development.

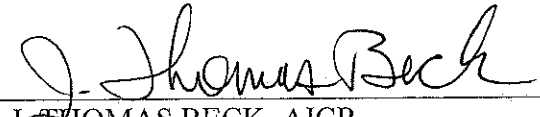
(h) Protection of the public health, safety, welfare and economy of the City of Key West, and the maintenance of Key West as a unique Florida resource.

8. The Ordinance is consistent with Policy 1-3.12.1 of the City of Key West Comprehensive Plan.

WHEREFORE, IT IS ORDERED that City of Key West Ordinance No. 12-15 is found to be consistent with the Principles for Guiding Development for the City of Key West Area of Critical State Concern and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.



J. THOMAS BECK, AICP
Director, Division of Community Development
Department of Economic Opportunity

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS **RECEIVED** BY:

AGENCY CLERK
DEPARTMENT OF ECONOMIC OPPORTUNITY
OFFICE OF GENERAL COUNSEL
107 EAST MADISON STREET, MSC 110
TALLAHASSEE, FLORIDA 32399-4128.

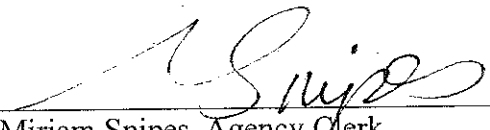
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order was filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 2nd day of August, 2012.


Miriam Snipes, Agency Clerk
Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail:

The Honorable Craig Cates
Mayor, City of Key West
3216 Flagler Avenue
Key West, FL 33040

Cheryl Smith, City Clerk
3216 Flagler Avenue
Key West, FL 33040

Donald Leland Craig, AICP
City Planner
3140 Flagler Avenue
Key West, FL 33040

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator, DEO Tallahassee
Sherry A. Spiers, Assistant General Counsel, DEO Tallahassee

EXECUTIVE SUMMARY



To: Jim Scholl

From: Donald Leland Craig, AICP, Planning Director

Meeting Date: May 15, 2012

RE: Zoning In Progress - An ordinance amending Chapter 108 of the Code of Ordinances entitled "Planning and Development" to include Section 108-999 to provide for the retroactive invoking of the Zoning in Progress Doctrine; declaring that the City is considering amendments to its Land Development Regulations and Building Permit Allocation System; directing Building and Planning Department staff to continue the policy of deferring the acceptance and processing of development applications requiring the issuance of building permit allocations; continuing this policy until new building permit allocation regulations or amended Land Development Regulations are adopted by the City Commission; providing for retroactive effect, directing staff to continue preparations of new Building Permit Allocation Regulations; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Location: Citywide

Background: In accordance with the requirements of Section 108-995 of the Land Development Regulations, Planning Department staff has been tracking and monitoring the Building Permit Allocation System (BPAS). The Department recently finalized the BPAS 2010-2011 Annual Report, providing for recommendations with respect to adjustments in the building permit allocation schedule. As a result of the findings of the report, the Planning Department, upon coordination with the City's Legal Department, recommends the invoking of Zoning in Progress while City staff updates the BPAS ordinance.

To summarize the 2010 annual report findings, the Planning Department estimates that a total of 100.23 Equivalent Single Family Units (ESFU) remain unallocated. Based on a vacant lot analysis performed in accordance with Section 108-995 of the Land Development Regulations, it is estimated that there are approximately 86 lots of record potentially eligible for Beneficial Use consideration (based on on-going research performed by the Planning Department). Furthermore, the Annual Report also provides that Policy 1-3.12.2 of the Comprehensive Plan, which requires that 30% of all new permanent residential units be affordable units based on definitions and criteria contained in Policy 3-1.1.3 of the Comprehensive Plan has been met. As a result, the Planning

Department estimates that approximately 14.23 ESFU remain as excess units as of the date of this report.

The latest update to the BPAS ordinance occurred through Ordinance 10-10. This ordinance, under Section 108-995 provides that the City shall reserve a minimum number of units for beneficial use claims, based on available data. The ordinance then provides that "remaining units shall be allocated in accordance with the Comprehensive Plan and Land Development Regulations." Based on the data available when Ordinance 10-10 was approved, any remaining units available would need to be allocated for affordable housing, as the 2009 BPAS Audit Report findings identified that Policy 1-3.12.2 in the Comprehensive Plan had not yet been met. As such, the interpretation of Ordinance 10-10 provided that any remaining units must be reserved for beneficial use claims and meeting Comprehensive Plan requirements with respect to affordable housing.

Planning Staff Analysis:

As staff reevaluated the 2009 Audit Findings to compile the 2010-2011 BPAS Annual Report, it became evident that there is no longer an obligation under the Comprehensive Plan to reserve units specifically for affordable housing. As such, Planning Department staff have determined that the City must consider revisions to the BPAS ordinance to ensure consistency between the Comprehensive Plan and supporting BPAS ordinance, as well as to provide an updated allocation system for excess units. Though at this time there is a minimal number of excess units available, an updated allocation system will help provide direction to the City should additional units be allocated in the future, or be discovered (for example, such as new allocations granted by the state, allocations that may derive from settlement agreements, or through the recognition of fully documented recovered units).

On November 16, 2011, City staff met to discuss these key report findings. As a result, the City of Key West Planning Department is recommending consideration of the invocation of the Zoning in Progress doctrine, commencing retroactively from the November 16, 2011 meeting date. Zoning in Progress will provide a measure for City staff to update the BPAS ordinance, and protect the remaining excess units from being allocated, when no criteria are in effect for equal or balanced distribution to multiple applicants.

Attached to this report are current representations of the Draft BPAS Master Spreadsheet and Draft Vacant Lot Analysis. These documents represent staff research to date, but are not final documents. It is important to note that the information presented in this report, as well as associated supporting documents, is not static. As units are recovered to the City, or as units are allocated, these numbers can fluctuate. The information in this document is a representation of the information available at the time of report preparation.

Previous City Actions:

The Planning Board approved the recommendation for invoking the Zoning in Progress doctrine at a regularly scheduled meeting on January 19, 2012. On April 19, 2012 the

Planning Board adopted a resolution recommending the City Commission adopt the Zoning in Progress by ordinance in order to address any potential legal challenges that may have resulted in pursuing the changes to the BPAS ordinance first initiated by resolution only.

Options / Advantages / Disadvantages:

Option 1. To invoke the Zoning in Progress Doctrine, commencing retroactively from November 16, 2011; with the exception of requests involving beneficial use allocations, City staff shall defer the acceptance and processing of applications requiring building permit allocations.

1. Consistency with the City's Comprehensive Plan and Land Development Regulations:

Invoking the Zoning in Progress Doctrine while City staff updates the regulations regarding the Building Permit Allocation System is an action consistent with the City's Comprehensive Plan and Land Development Regulations.

2. Consistency with the City's Strategic Plan, Vision and Mission:

The proposal is consistent with the City's Strategic Plan, Vision, and Mission.

3. Financial Impact:

The proposal is intended to create a fair, equitable building permit allocation structure, and as such, may limit the City's vulnerability to potential takings claims.

Option 2. To not invoke the Zoning in Progress Doctrine.

1. Consistency with the City's Comprehensive Plan and Land Development Regulations:

Choosing to not invoke the Zoning in Progress Doctrine would still be consistent with the City's Comprehensive Plan and Land Development Regulations; however, it is staff's professional opinion that Zoning in Progress is the best measure for the City based on the current availability of building permit allocations.

2. Consistency with the City's Strategic Plan, Vision and Mission:

Choosing to not invoke the Zoning in Progress Doctrine would still be consistent with the City's Strategic Plan, Vision, and Mission; however, it is staff's professional opinion that Zoning in Progress is the best measure for the City based on the current availability of building permit allocations.

3. **Financial Impact:**

Not approving Zoning in Progress may indirectly put the City in a vulnerable position with respect to potential takings claims, as well as fair, equitable distribution of the remaining building permit allocations.

Recommendation:

The Planning Department recommends the **approval of Option 1**, invoking the Zoning in Progress Doctrine by Ordinance, commencing retroactively from November 16, 2011; with the exception of requests involving beneficial use allocations, City staff shall defer the acceptance and processing of applications requiring building permit allocations.

**PLANNING BOARD
RESOLUTION NO. 2012-14**

A RESOLUTION AMENDING PLANNING BOARD RESOLUTION 2012-04, AND RECOMMENDING AMENDMENT TO CHAPTER 108 OF THE CODE OF ORDINANCES ENTITLED "PLANNING AND DEVELOPMENT," TO INCLUDE SECTION 108-999 TO PROVIDE FOR THE RETROACTIVE INVOKING OF THE ZONING IN PROGRESS DOCTRINE; DECLARING THAT THE CITY IS CONSIDERING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS AND BUILDING PERMIT ALLOCATION SYSTEM; DIRECTING BUILDING AND PLANNING DEPARTMENT STAFF TO CONTINUE THE POLICY OF DEFERRING THE ACCEPTANCE AND PROCESSING OF DEVELOPMENT APPLICATIONS REQUIRING THE ISSUANCE OF BUILDING PERMIT ALLOCATIONS; CONTINUING THIS POLICY UNTIL NEW BUILDING PERMIT ALLOCATION REGULATIONS OR AMENDED LAND DEVELOPMENT REGULATIONS ARE ADOPTED BY THE CITY COMMISSION; PROVIDING FOR RETROACTIVE EFFECT, DIRECTING STAFF TO CONTINUE PREPARATIONS OF NEW BUILDING PERMIT ALLOCATION REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 108-995 of the Land Development Regulations requires the City's Administrative Official to provide an annual report to the Planning Board and City Commission providing the results of tracking and monitoring requirements and recommendations for any changes in the allocation by structure type or intended use of the City's Building Permit Allocation; and

WHEREAS, the 2010-2011 Building Permit Allocation Annual Report provides

recommendations based on the implementation of the Building Permit Allocation System; and

WHEREAS, the Planning Department began documented efforts concerning the subject on at least November 16, 2011; and

WHEREAS, in order to provide for the orderly allocation of a very limited number of existing building permit allocations, the City of Key West Planning Department proposes the invoking of the Zoning in Progress Doctrine to the City of Key West Planning Board for consideration of recommendation to the City Commission to temporarily halt the issuance of building permits pending the passage of a Building Permit Allocation System; and

WHEREAS, the Planning Board approved a resolution invoking the Zoning in Progress Doctrine on January 19, 2012 through Resolution 2012-04; and

WHEREAS, an amendment to Chapter 108 of the Code of Ordinances is necessary to provide for the retroactive invoking of the zoning in progress doctrine; and

NOW THEREFORE BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That Section 1 of Planning Board Resolution 2012-04 is supplemented as follows:

That pursuant to the pending legislation doctrine set forth in Smith v. City of Clearwater, 383

So. 2d 681 (Fla. 2nd DCA 1980), with the exception of requests involving beneficial use allocations, City staff shall defer the acceptance and processing of applications requiring building permit allocations. Chapter 108, Article X, of the Code of Ordinances is hereby amended as follows*:

Sec. 108-999 Zoning in Progress.

City staff shall defer the acceptance and processing of applications dated after November 16, 2011 for building permit allocations with exception of requests for beneficial use allocations until new land development regulations are adopted, or until the passage of 365 days, whichever occurs first.

108-9991000-108-1125- Reserved

Section 2. That Section 2 is amended as follows:

That this policy shall be in effect until new Land Development Regulations or amended Land Development Regulations are adopted by the City Commission or until the passage of ~~365~~ 180 days, whichever occurs first.

Section 3. That Section 5 is amended as follows:

Should the City Commission recommend approval of Zoning in Progress, the adoption of the City Commission resolution shall be evidenced by placement of a notice in a newspaper of general circulation within the City, in accordance with Chapter 50, Florida Statutes, within two weeks after adoption of this resolution. A copy of this resolution shall also be posted at City Hall for the next 365 days.

Section 3. All other provisions of Planning Board Resolution 2012-04 remain in full force and effect.

Section 4. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed at a regular meeting held this 19 day of April, 2012.

Authenticated by the Chairman of the Planning Board and the Planning Director.

Richard Klitenick, Chairman
Key West Planning Board

Date

Attest:

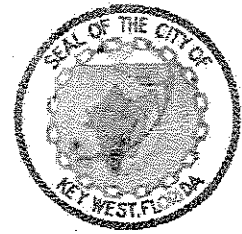
Donald Leland Craig, AICP
Planning Director

Date

Filed with the Clerk:

Cheryl Smith, City Clerk

Date



THE CITY OF KEY WEST PLANNING BOARD Staff Report

To: Chairman and Planning Board Members

From: Donald Leland Craig, AICP, Planning Director

Meeting Date: April 19, 2012

Agenda Item: Zoning in Progress – A resolution amending Planning Board Resolution 2012-04, and recommending amendment to Chapter 108 of the Code of Ordinances entitled "Planning and Development" to include Section 108-999 to provide for the retroactive invoking of the Zoning in Progress Doctrine; declaring that the City is considering amendments to its Land Development Regulations and Building Permit Allocation System; directing Building and Planning Department staff to continue the policy of deferring the acceptance and processing of development applications requiring the issuance of building permit allocations; continuing this policy until new building permit allocation regulations or amended Land Development Regulations are adopted by the City Commission; providing for retroactive effect, directing staff to continue preparations of new Building Permit Allocation Regulations; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Background: In accordance with the requirements of Section 108-995 of the Land Development Regulations, Planning Department staff has been tracking and monitoring the Building Permit Allocation System (BPAS). The Department recently finalized the BPAS 2010-2011 Annual Report, providing for recommendations with respect to adjustments in the building permit allocation schedule. As a result of the findings of the report, the Planning Department, upon coordination with the City's Legal Department, recommends the invoking of Zoning in Progress while City staff updates the BPAS ordinance.

The BPAS report identified a limited number of allocations available, and the fact that the 2011 BPAS Annual Report identified a situation wherein existing BPAS allocations are subject to requests for any market rate purpose. This situation in light of the renewed demand for new residential development, when not described by a pause in allocation of units, would allow the capture of all available BPAS allocations by a single person or entity, not in conformance with other parts of the Comprehensive Plan.

The Planning Board recently approved a resolution recommending to the City Commission the invoking of Zoning in Progress (Resolution 2012-04). However, it is staff's recommendation to amend the resolution and propose the invoking of Zoning in Progress doctrine by means of ordinance to comport with the necessary specifics of law, which requires resolutions affecting the land use, timing, development, or location of development be adopted by ordinance only.

Review Criteria:

Section 90-522 of the Code of Ordinances outlines key review criteria for any changes to the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below.

Sec. 90-522. Planning Board review of proposed changes in Land Development Regulations.

(a) **The Planning Board, regardless of the source of the proposed change in the Land Development Regulations, shall hold a public hearing thereon with due public notice. The Planning Board shall consider recommendations of the City Planner, City Attorney, Building Official and other information submitted at the scheduled public hearing. The Planning Board shall transmit a written report and recommendation concerning the proposed change of zoning to the City Commission for official action. In its deliberations the Planning Board shall consider the criteria stated in section 90-521.**

Sec. 90-521. Criteria for approving amendments to official zoning map.

In evaluating proposed changes to the official zoning map, the city shall consider the following criteria:

(1) *Consistency with plan.* Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure, minimum levels of service standards and the concurrency management program.

The proposed change does not impact the official zoning map or underlying future land use map designations. It does provide for the invoking of Zoning in Progress as a measure to plan for future modifications to the existing Building Permit Allocation System ordinance, which itself exists to implement specific policies in the Comprehensive Plan.

(2) *Conformance with requirements.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.

The proposed modifications appear consistent with all applicable requirements of the Code.

(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing

regulations, and whether such changes support or work against the proposed rezoning.

The underlying need for a Building Permit Allocation System remains the same as it did when the Comprehensive Plan was originally adopted. However, clarifications and modifications to the implementing ordinance are required due to changed conditions over time.

(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

This proposal does not impact land use classifications; therefore, this provision is not applicable.

(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.

The proposed ordinance modifications affect the allocation of residential units and do not impact concurrency determinations or other public facility determinations in the Comprehensive Plan and Land Development Regulations. All development and redevelopment must comply with those regulations.

(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

The proposed ordinance modification relates to the allocation of residential units and does not impact existing natural resource protection regulations.

(7) *Economic effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.

The invoking of Zoning in Progress is not anticipated to adversely affect property values in the area or the general welfare.

(8) *Orderly development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

This modification is not expected to have any new impact on existing land use patterns.

(9) *Public interest; enabling act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.

The proposal is not in conflict with the public interest, and is in harmony with the purpose and interest of the land development regulations.

(10) *Other matters.* Other matters which the planning board and the city commission may deem appropriate.

Modifications to the Building Permit Allocation System are necessary to clarify provisions of the system. Further changes are also expected as part of updates to the Comprehensive Plan.

PROCESS

After the Planning Board recommends changes to the City Commission, the ordinance will require two City Commission readings for adoption. Absent any appeals, the ordinance will be rendered to the state land planning agency, which will have 60 days to issue an order of consistency.

RECOMMENDATION



The Planning Department recommends the amending of Planning Board Resolution 2012-04, and the recommendation of the attached ordinance invoking of the Zoning in Progress Doctrine to the City Commission.

**PLANNING BOARD
RESOLUTION NO. 2012-04**

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD RECOMMENDING TO THE CITY COMMISSION THE INVOKING OF THE ZONING IN PROGRESS DOCTRINE; DECLARING THAT THE CITY IS CONSIDERING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS TO ADOPT A BUILDING PERMIT ALLOCATION SYSTEM; DIRECTING BUILDING AND PLANNING DEPARTMENT STAFF TO CONTINUE THE POLICY OF DEFERRING THE ACCEPTANCE AND PROCESSING OF DEVELOPMENT APPLICATIONS REQUIRING THE ISSUANCE OF BUILDING PERMIT ALLOCATIONS; CONTINUING THIS POLICY UNTIL NEW BUILDING PERMIT ALLOCATION REGULATIONS OR AMENDED LAND DEVELOPMENT REGULATIONS ARE ADOPTED BY THE CITY COMMISSION ; PROVIDING FOR RETROACTIVE EFFECT, DIRECTING STAFF TO CONTINUE PREPARATIONS OF NEW BUILDING PERMIT ALLOCATION REGULATIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 108-995 of the Land Development Regulations requires the City's Administrative Official to provide an annual report to the Planning Board and City Commission providing the results of tracking and monitoring requirements and recommendations for any changes in the allocation by structure type or intended use of the City's Building Permit Allocation System; and

WHEREAS, the 2010-2011 Building Permit Allocation System Annual Report provides

 Chairman
 Planning Director

recommendations based on the implementation of the Building Permit Allocation System; and


WHEREAS, the Planning Department began documented efforts concerning the subject on at least November 16, 2011; and

WHEREAS, in order to provide for the orderly allocation of a very limited number of existing building permit allocations, the City of Key West Planning Department proposes the invoking of the Zoning in Progress Doctrine to the City of Key West Planning Board for consideration of recommendation to the City Commission to temporarily halt the issuance of building permits pending the passage of a Building Permit Allocation System; and

WHEREAS, this Planning Board agenda item was advertised in the "Key West Citizen" on January 8, 2012; and

NOW THEREFORE BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That pursuant to the pending legislation doctrine set forth in Smith v. City of Clearwater, 383 So. 2d 681 (Fla. 2nd DCA 1980), with the exception of requests involving beneficial use allocations, City staff shall defer the acceptance and processing of applications requiring building permit allocations.

 Chairman

 Planning Director

Section 2. That this policy shall be in effect until new Land Development Regulations or amended Land Development Regulations are adopted by the City Commission or until the passage of 365 days, whichever occurs first.

Section 3. That until such time that the new Land Development Regulations become effective, no building permit allocations shall be granted pursuant to a request filed with a submittal date of November 16, 2011, or later.

Section 4. That City Planning and Legal staff are directed to continue the preparation and processing of ordinances (the "Pending Ordinances") that would adopt the Building Permit Allocation System. The Pending Ordinances, if adopted, will amend the City's Land Development Regulations. All affected property and business owners are placed on notice with respect to the Pending Ordinances and the action being taken by the appropriate departments within the City.

Section 5. Public Notice. Should the City Commission recommend approval of Zoning in Progress, the adoption of the City Commission resolution shall be evidenced by placement of a notice in a newspaper of general circulation within the City, in accordance with Chapter 50, Florida Statutes, within two weeks after adoption of this resolution. A copy of this resolution shall also be posted at City Hall for the next 365 days.

Pulk Chairman
DC Planning Director

Read and passed at a regular meeting held this 19th day of January, 2012.

Authenticated by the Chairman of the Planning Board and the Planning Director.



Richard Klitenick, Chairman
Key West Planning Board

2/2/2012

Date

Attest: 

Donald Leland Craig, AICP
Planning Director

2.1.12,

Date

Filed with the Clerk:




Cheryl Smith, City Clerk

2-2-12

Date

Chairman

 _____
Planning Director